IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11150 of 2006
with
SPECIAL CIVIL APPLICATION No. 11151 of 2006
to
SPECIAL CIVIL APPLICATION No. 11156 of 2006
with
SPECIAL CIVIL APPLICATION No. 10982 of 2006
with
SPECIAL CIVIL APPLICATION No. 11136 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYABEN GANESHBHAI BORSANIYA & 6 - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR PS CHAMPANERI for Petitioner(s) : 1 - 7.
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2,4 - 5.
MR HS MUNSHAW for Respondent(s) : 3, 6,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 13/07/2006

COMMON ORAL JUDGMENT

1. Heard Mr. Champaneri and Mr. Mangukiya for the concerned petitioners, Mr. Mengdey, learned AGP for the Development Commissioner and the State Authorities and Mr. Munshaw for District Development Officer and Taluka Development Officer in all the matters for final disposal.

2. It may be recorded that under the direction of the Court, Mr. Mengdey, learned AGP made original files available of the Development Commissioner.

3. After the voters elected through the representatives in a Local Self Government due to a self created situation by the elected representatives for fulfilling their desire to get more power by strangulating the situation, what could be the possible consequences leading not only the dissolution of a Local Self Government, but, dragging the residents of the area to bear with the expenses of the fresh election could arise and in such situation, what would be the positive role of the State Government and consequently, the approach of the Court are the questions, which arise for consideration of this Court in the present group of petitions.

4. It is no doubt true that in the democratic

system the local self Government is to be run through its elected representatives. It is also true that the voter reposes faith upon the elected representative while electing them with the expectation that pious obligation will be discharged by them in the larger public interest when they are ultimately elected and resume the office. However, when tug-of-war starts for power amongst the elected representative themselves, the interest of the voters or the citizens are if not ignored, but, hardly taken care of. Such situation leads to the voter to remain a silent spectator who is ultimately to bear the burden of consequences by the conduct, which may be performed by the elected representative after the election. Is the law remediless in such circumstances? Is the approach of the State Government called for to ensure that the voters/citizens may not be saddled with additional burden of election? Is it required for the State Government to take more stringent action or not? Above all, the approach of the Court in such matters are incidental questions which also arise for consideration of this Court in the present group of petitions.

5. Certain facts leading to the present group of petitions can be summarised as under:

6. One group of petitions pertain to the dissolution of the Lathi Taluka Panchayat being Special Civil Application Nos. 11150 of 2006

with Special Civil Application No. 11151 of 2006 to 11156 of 2006 with Special Civil Application No. 10982 of 2006(hereinafter for short shall be referred as 'the petitions pertaining to Lathi Taluka Panchayat'). The other petition pertains to dissolution of Kukavav Taluka Panchayat being Special Civil Application No. 11136 of 2006(hereinafter for short shall be referred as 'petition pertaining to Kukavav Taluka Panchayat').

7. In the petitions pertaining to Lathi Taluka Panchayat, it appears that the election of Lathi Taluka Panchayat was held in the month of October-November 2005 and as per the constitution read with the provisions of the Gujarat Panchayat Act (hereinafter referred to as the 'Act'), the statutory term is upto November 2010. After the election, the first meeting of Lathi Taluka Panchayat was held on or about 9.11.2005, the Budget estimate was prepared and sent for approval of the District Panchayat, Amreli on or about 02.01.2006. The budget estimate of Taluka Panchayat was approved by the District Panchayat and the same was communicated to Lathi Taluka Panchayat by District Development Officer, Amreli, vide communication dated 16.02.2006. The meeting of Lathi Taluka Panchayat was held on 20.03.2006 for considering the budget and at the said meeting, 17 members of Taluka Panchayat remained present out of which 8 members of Taluka Panchayat voted in favour of approving the

budget whereas, 9 members voted against the approval of the budget and consequently, the budget was not passed in the meeting dated 20.03.2006 of Lathi Taluka Panchayat. It appears that thereafter, once again, the meeting of Lathi Taluka Panchayat was held for considering the approval of the budget on 27.03.2006 and at that meeting, 15 members of the Taluka Panchayat attended the meeting out of which, 6 members supported the approval of the budget whereas, 9 members voted against the approval of the budget and consequently, again at the meeting dated 27.03.2006 of Lathi Taluka Panchayat, the budget was not passed. As the budget was not passed, the District Development Officer, Amreli, submitted a proposal on or about 15.04.2006 for dissolution of Lathi Taluka Panchayat under Section 253 of the Act.

8. It appears that on 15.04.2006, a show-cause notice was issued by the Development Commissioner of the Gujarat State, respondent No. 2 herein, in exercise of powers under Section 253 of the Act to show cause as to why Taluka Panchayt should not be dissolved and the notice was issued to the President of Lathi Taluka Panchayat itself. It was mentioned in the show-cause notice that it was required for the Lathi Taluka Panchayat to approve the budget on or before 31st March, which has not bee done and therefore, Lathi Taluka Panchayat has failed in discharging its statutory obligation and therefore, it has become incompetent to perform

its statutory duty as required under the Act and therefore, why Lathi Taluka Panchayat should not be dissolved. The copy of the said notice was forwarded to the District Development Officer, Lathi with the direction that the matter should be placed before the Taluka Panchayat and the necessary action may be taken immediately and the person concerned may remain present with record on the date fixed.

9. It appears that on 29.04.2006, probably in view of the aforesaid show-cause notice issued by the Development Commissioner for dissolution of the Taluka Panchayat, a Special General Meeting of Taluka Panchayat was held vide agenda dated 20.04.2006 and in the said meeting, 15 members out of total 17 members of Taluka Panchayat remained present and at the said meeting, one of the business transacted was the notice of dissolution at which, 7 members of Taluka Panchayat voted for supporting the dissolution of Taluka Panchayat whereas, 8 members of Taluka Panchayat voted against the dissolution of Taluka Panchayat. The second business transacted at the said meeting was for approval of budget of 2006-2007 and the budget was passed with the majority of 8 members as against 7 members and therefore, accordingly on 29.04.2006, the said budget was passed by Lathi Taluka Panchayat. As per the petitioners, the factum of passing the budget on 29.04.2006 was brought to the notice of the Development Commissioner. It appears that the Development Commissioner proceeded

further with the matter and in view of the decision of this Court in the case of **Rakeshkumar Somabhai Rathod Vs. the State of Gujarat, reported at 2006(1) GLH 551,** proceeded to examine as to whether there was any reasonable cause for delay caused in passing the budget or not. Ultimately, for the reasons recorded in the said order, the Development Commissioner found that earlier, in the meeting dated 20.03.2006 of Lathi Taluka Panchayat, the budget was not approved on the ground that the same is not prepared keeping in view the progressive approach and thereafter, in the subsequent meeting dated 27.06.2006, the budget was not passed event though second opportunity was available. However, after the show-cause notice without there being any change in the budget, the same is passed on 29.04.2006 and this shows, that there is self-contradictory and arbitrary approach of Taluka Panchayat and the Development Commissioner also recorded that the opinion can be formed that the Panchayat has become incompetent to perform its duties under the Act and even the Executive Committee of the District Panchayat has also recommended for dissolution of the Lathi Taluka Panchayat and therefore, ultimately, the order was passed for dissolution of Lathi Taluka Panchayat. It is under these circumstances, the elected members of the Lathi Taluka Panchayat have approached to this Court by preferring the present group of petitions.

10. It may be recorded that Special Civil Application No. 10982 of 2006 is preferred by two petitioners; one has described himself as Vice President of Lathi Taluka Panchayat and another is the member of the Executive Committee of the Lathi Taluka Panchayat, whereas, Special Civil Application Nos. 11150 of 2006 and others are preferred by 7 members of Lathi Taluka Panchayat. Therefore, in all, 9 elected members of Lathi Taluka Panchayat out of total 17 members of Lathi Taluka Panchayat have approached to this Court by preferring the petition for challenging the order passed by the Development Commissioner for dissolution of the Panchayat in purported exercise of power under Section 253 of the Act.

11. Special Civil Application No. 11136 of 2006 pertains to Kukavav Taluka Panchayat. It appears that the last election of the Kukavav Taluka Panchayat was held in April 2005 and therefore, the statutory term read with the provisions of the constitution would be upto 2010. It is alleged in the petition that in all, there were 15 elected representatives, out of which, 8 were elected candidates were sponsored by the opposition party. After the election, one Jayaben Movaliya was elected as President of the Kukavav Taluka Panchayat and Bhikhabhai Vora as Vice President of Kukavav Taluka Panchayat. It is stated in the petition that a motion of no confidence was moved against the President and Vice President of

Taluka Panchayat, which was signed by 11 members of Kukavav Taluka Panchayat and the said motion of no confidence was considered by the General Body of Taluka Panchayat. On 22.03.2006, the meeting of Taluka Panchayat was held for considering the budget. At the said meeting, as per the petitioners, since the other members had no confidence over the President of Taluka Panchayat, the Budget was not approved and Taluka Development Officer was requested to convene another meeting for consideration of the budget. Therefore, in the meeting dated 22.03.2006, it appears that the budget was not passed. As per the petitioners, vide letter dated 23.03.2006, the Taluka Development Officer requested the President of Taluka Panchayat to convene the meeting for considering the budget once again. However, as the President of Taluka Panchayat was facing the motion of no confidence, he did not convene the meeting of Taluka Panchayat. It appears that in any case, before 31.03.2006, the budget was not passed by the Taluka Panchayat.

12. It appears that as the budget was not passed before 31.03.2006, the District Development Officer forwarded the proposal to the Development Commissioner for initiation of the action under Section 253 of the Act for dissolution of Taluka Panchayat and in the said proposal dated 3/4.04.2006, it was also mentioned that the motion of no confidence is also moved against the President and Vice

President for which, separate proceedings are going on. It appears that the President and the Vice President of the Taluka Panchayat did not convene the meeting for considering the motion of no confidence against them and therefore the report was submitted by Taluka Development Officer to District Development Officer for such purpose on 04.04.2006.

13. Thereafter, on 10.04.2006, the District Development Officer passed the order for convening the meeting of Special General Body of Taluka Panchayat for considering the motion of no confidence against the President and Vice President on 25.04.2006. The agenda for such purpose was issued on 12.04.2006 by Taluka Development Officer.

14. On 17.04.2006, a show-cause notice was issued by the Development Commissioner on the ground that in the meeting dated 22.03.2006 of Taluka Panchayat, the budget was not approved and therefore Kukavav Taluka Panchayat was required to approve the budget, which is not approved prior to 31.03.2006 and therefore, the Panchayat has become incompetent to perform its statutory obligation and therefore, the President and the Taluka Panchayat were called upon to show cause as to why, the Kukavav Taluka Panchayat should not be dissolved. The copy of the same was forwarded to District Development Officer as well as the Taluka Development Officer for placing the matter before the Taluka Panchayat

and to take necessary steps immediately and to remain present on the date of hearing fixed. It appears that thereafter, the meeting of Taluka Panchayat was not held nor convened by the Taluka Development Officer or the President of the Taluka Panchayat. A statement is made in the affidavit-in-reply of Taluka Development Officer that the President of Taluka Panchayat was asked to convene the meeting of General Body of Taluka Panchayat on or before 02.05.2006 to file the reply before the Development Commissioner, but, no meeting was convened by him and therefore, no reply was filed by the General Body. The record of the report dated 29.04.2006 submitted by the Taluka Development Officer to the Development Commissioner after the show-cause notice does not show that he had intimated to the President to convene the meeting but, it appears that vide item No. 16 of the said report of Taluka Development Officer it was stated that on 21.04.2006, when the motion of no confidence was passed, at that time, 11 members had requested for holding of another meeting but, since the motion of no confidence was passed against the President, the meeting was not convened.

15. It appears that prior to the date of hearing, which was fixed of 02.05.2006, 11 members of Taluka Panchayat submitted representation before Development Commissioner on 29.04.2006 that they have learnt about the proceedings of supersession from the newspaper and the

President has failed to convene the meeting for considering the budget prior to 31.03.2006. It was also stated that on 22.04.2006, 2/3rd member of Taluka Panchayat had requested Taluka Development Officer to convene the meeting and it was represented by the members in the said representation that the President is personally responsible for not giving opportunity to Taluka Panchayat to consider the budget once again and therefore, the President should be removed from the membership and the whole body may not be superseded. It appears that thereafter on 10.05.2006, the Development Commissioner intimated to the District Development Officer that, the reply of the Panchayat by Resolution is not presented and therefore, the hearing could not be made on 02.05.2006 and therefore, the intimation be given to all members of Taluka Panchayat for fixing the hearing on 18.05.2006. It appears that on 18.05.2006, 11 members remained present through their advocate and requested for supplying the copy of the show-cause notice and such request was granted. Simultaneously, on 18.05.2006, one Rathod Balubhai Lakhubhai representing himself as the Chairman of Social Justice Committee submitted in writing that he is desirous to see that the Taluka Panchayat is dissolved since the budget was not passed. Even Jayaben Movaliya who was formerly President of Taluka Panchayat against whom, the motion of no confidence was passed also declared in writing before the Development Commissioner that she is also desirous to see

that the Taluka Panchayat is dissolved. One another member of Taluka Panchayat Vora Bhikbhubhai Karamsibhai, who was formerly Vice President of the Taluka Panchayat also declared before the Development Commissioner on 19.05.2006 that he is desirous that the Panchayat be dissolved and the fresh mandate be obtained from the voters. The similar was also the representation made on 18.05.2006 by one Chaganlal Shamjibhai Dholaria, who was the member of Taluka Panchayat. It appears from the original file of the Development Commissioner that the proceedings for submission of the reply was also drawn and it was recorded that due to the motion of no confidence against the President and Vice President, the meeting of the Taluka Panchayat is not held and the election of the President and Vice President is fixed on 23.05.2006. It appears that thereafter, on 19.05.2006, immediately, on the next date, after the copy of the show-cause notice was given, on 18.05.2006, the Development Commissioner has passed the order of dissolving Taluka Panchayat and it is under these circumstances, the 11 members out of the total 15 elected members of the Taluka Panchayat have approached to this Court by preferring the present petitions for challenging the order of dissolution passed by the Development Commissioner.

16. Section 138 of the Act provides for passing of the Annual Budget Estimate. Section 138 of the Act which is relevant, reads as under:

"138. Annual Budget estimates:

(1)Every taluka panchayat shall have prepared annually on or before the 15th December of the current year or such date not late than 31st December of the current year as may be approved by the District Panchayat, in such form and manner as may be prescribed in this behalf a budget estimate of its income and expenditure for the next year and forward it to the district panchayat on or before-

(a) the 31st December of the current year where the budget estimates is prepared on or before the 15th December of the current year, or

(b)the 15th January of the current year where the budget estimate is prepared after the 15th December of the current year but on or before the said approved date:

Provided that the budget estimate shall be so prepared that at the end of the year the panachayat shall have at its credit a balance of not less than such minimum amount as may be prescribed in that behalf.

(2)The district panchayat shall scrutinise the budget estimate and return it to the panchayat within two months of its receipt with such observations and recommendations

as it may make in respect of the budget estimate.

(3)The taluka panchayat shall thereupon approve the budget estimate on or before the 31st March of the current year with such modifications as it may think fit having regard to the observations and recommendations made by the panchayat under sub-section (2).

(4)Where any taluka panchayat has failed to comply with the provisions of sub-section(3) it shall be lawful for the State Government to form an opinion that the panchayat is incompetent to perform the duties imposed on it or functions entrusted to it under the provisions of this Act.

Explanation :- A taluka panchayat shall not be deemed to have failed to comply with the provisions of sub-section (3) if such failure has resulted on account of non-compliance by the district panchayat of provisions of sub-section(2).”

Sub-section (1) of Section 138 provides for various dates for preparation of the budget. Sub-section (2) of Section 138 provides for scrutinising of the said budget by the District Panchayat. Sub-section (3) of Section 138 provides that Taluka Panchayat shall thereupon approve the budget estimate on or before 31st March of the current year with modification as it may think fit. Sub-section (4) of Section 138

provides that where any Taluka Panchayat has failed to comply with the provisions of sub-section (3), it shall be lawful for the State Government to form an opinion that the Panchayat is incompetent to perform the duty imposed on it or functions entrusted to it under the provisions of this Act. The explanation to sub-section (4) of Section 138 provides that Taluka Panchayat shall not be deemed to have failed to comply with the provisions of sub-section (3) if such failure has resulted on account of non-compliance by the district Panchayat of provisions of sub-section (2).

Section 253 of the Act provides for the power of dissolution with the State Government if in the opinion of the State Government, if the Panchayat is incompetent in performance of the duties imposed on it or functions entrusted to it.

17. The Division Bench of this Court in the case of **Nathalal Manilal Patel & Anr. Vs. A.R. Banerjee, Development Commissioner reported at 1991(2) GLR 811** had an occasion to consider similar provisions under the Gujarat Panchayat Act, 1961 for passing of the budget by the Taluka Panchayat. In the said decision, it was observed by the Division Bench inter alia at para 6 of its decision while interpreting the similar provisions of the Act of 1961 as under:

“Rule 161(b) lays down that the Panchayat shall

prepare its budget and shall submit it to the District Panchayat on or before March 10 every year. Sub-section (2) of Section 124 allows two two months time to the District Panachayat to scrutinise the budget estimate and return to it to the Panchayat with observations and recommendations as it may make in respect of the budget estimate. However, clause (b) of Rule 161 provides that on return of the budget estimate from the District Panchayat, after scrutiny, the Panchayat shall approve the same before 31st March. Clause (b) of Rule 161 is not consistent with sub-section (2) of Section 124 of the Act. This factor has to be borne in mind while considering the question whether or not the provision contained in Rule 161 to approve the budget estimate on or before March 31st is mandatory or directory."

It was further observed by the Division Bench inter alia at para 8 as under:

"The combined reading of Sections 124, 126 and Rule 161 clearly indicates that the provision for approving the budget estimate before March 31 is not mandatory but directory. Ordinarily the Panchayat should approve the budget estimate of the next year before the commencement of that year. But, there may be circumstances under which it may not be possible for the Panchayat to do so and if that happens, such estimate can be approved within reasonable time thereafter, depending upon the facts and circumstances of

the case. It would be a hyper technical view to hold that the provisions of approving budget estimate before March 31st every year contained in clause (b) of Rule 161 of the Rules is mandatory so as to require strict compliance. Having regard to the provisions of Sections 124 & 126, the word "shall" should be read as "may". In other words, the above provisions to approve the budget estimate before 31st March is directory provision requiring no strict compliance, but substantial compliance." (Emphasis supplied)

The Division Bench of this Court thereafter at para 9 further observed as under:

"When the Development Commissioner passed order on May 21, 1990, holding that the Panchayat was incompetent to perform its function, the budget estimate was already approved. Since the budget estimate was approved, we fail to see how it could be held that the Panchayat was incompetent to perform its duties or functions on the date on which the Development Commissioner passed the order, there was nothing to prevent the Panchayat from incurring expenditure which was included in the budget estimate for discharging its duties and functions. Mere fact that the budget estimate was not approved before March 31, 1990 would not necessarily lead to the conclusion that the Panchayat was incompetent to perform its functions. There is no other grond

on which the Panchayat has been held to be incompetent to perform its functions. Therefore, in our opinion, considering all the facts and circumstances of the case, the Development Commissioner was not justified in holding that the Panchayat was incompetent to perform its functions.(Emphasis supplied)

Thereafter, the Division Bench inter alia at para 10 distinguished another decision of this Court in the case of Navindas Khemdas Patel Vs. State of Gujarat reported at 1988 (1) GLR 37 on the ground that in that case the budget was not passed at all.

Therefore, it appears that as per the aforesaid decision of Division Bench of this Court, if the budget estimate is not approved before March 31 for some valid reason, such estimate can be approved within some reasonable time thereafter, depending upon the facts and circumstances of the case. Mere fact that the budget estimate was not approved before March 31 would not necessarily lead to the conclusion that the Panchayat was incompetent to perform its function.

18. In case of the **Luvara Gram Panchayat Vs. State of Gujarat**, this Court (Coram : J.M. Panchal, J.), in Special Civil Application No. 6492 of 1997 had also an occasion to consider the question as to whether the budget if passed subsequently in any case prior to the order

passed by the Development Commissioner for dissolution can be considered or not. This Court at para 8 after taking into consideration the decision of the Division Bench of this Court in the case of Nathalal Manilal & Anr(Supra) observed as under :

> "It is further ruled by the Division Bench that the provision to approve the budget estimate before March 31 is a directory provision not requiring strict compliance, and if the budget estimate can be approved within reasonable time thereafter depending on the facts and circumstances of the case. What is emphasized by the Court is that mere fact that the budget estimate is not approved would not necessarily lead to the conclusion that the Panchayat is incompetent to perform its functions."

The Court thereafter, recorded that the factum of passing of the budget subsequently was not considered by the Development Commissioner and the matter was remanded by quashing the order of dissolution.

19. In the case of **Thasara Village Panchayat vs. P.D. Vaghela** reported at **2003 (1) GLR 676** this Court (Coram : P.B. Majmudar, J.) had an occasion to consider the similar question once again after the Gujarat Panchayat Act, 1993 came into force for considering as to whether the

supersession of the Gram Panchayat was justified if the budget was not passed prior to 31st March. This Court by relying upon the earlier decision of the Division Bench in the case of Nathalal Manilal Patel (Supra) observed inter alia that factum of not passing of the budget before 31st enables the Government to form an opinion that such Panchayat is not competent to perform its function, but, if in a given case, a Panchayat is able to show satisfactorily that there was genuine reason for not passing the budget within stipulated time, it is always open to the State Government to consider such ground for passing the ultimate order under Section 253 of the Act. It was also observed that when there is a contemplation of hearing, it can always be presumed that there there is always a discretion with the authority because in a given case, after giving hearing, the Government may change its opinion and may even condone the lapse on the part of the Panchayat if the Government is satisfied that there is genuine reason for not passing the budget. (Emphasis supplied)

20. In case of **Manishbhai Vinodbhai Patel Vs. State of Gujarat** reported at **2005(2) GCD 1780(Guj)**, this Court had an occasion to consider the question once again and after considering the earlier decision of this Court in the case of Thasara Village Panchayat vs. P.D. Vaghela, it was inter alia observed at para 6 as under :

> “Merely because the budget is not passed within stipulated time limit, should not be a ground for dissolution, but it would enable the Government to form an opinion as to whether the Panchayat has become incompetent to perform its function and while forming the opinion the Government has to take into consideration as to whether there was any genuine reason for not passing the budget within the stipulated time limit or there were other grounds which could be considered as valid grounds for the purpose of not passing the budget within stipulated time limit.”

It was contended in the said case that certain disgruntled members did not support the budget and therefore the budget was not passed before 31st March. To that aspect, it was observed by the Court as under:

> > “Even otherwise also when the budget was prepared, it was not passed by the majority, such ground can not be said to be a valid ground in the eye of law because in a democratic set up of a Gram Panchayat the members of a Gram Panchayat have right to independently examine each issue at the meeting including the budget and to express the view. If the majority of the members present at the meeting did not support the budget, the consequence apparently would be that the group of the

petitioner has lost majority from amongst the member of the Gram Panchayat. Such an action is repeated when second time it was presented on 31.03.2004 and also not passed by the majority. Therefore, at both the meetings, the budget could not be passed for want of the majority and the majority opposed the budget. If in a democratic set-up, the budget is not passed, may be on the ground of not holding the meeting within stipulated time limit, or for any other valid reason known to law, may stand on different footing. If the budget is not passed on account of the majority of the members opposing the budget, it can be said to be a sufficient ground even to form the opinion that the Panchayat has become incompetent to perform its duties, the reason being that even if the budget is passed, any decision for spending any amount for development work or for incurring any expenses would not be approved at the meeting and the same would consequently result into not only creating a stalmate in the functioning of the Panchayat but may also result into a situation that the the expenses are not duly approved by the general body of the Gram Panchayat. Further, question may also arise for recovering the amount, if expended or incurred

> without there being any proper authority or resolution of the Gram Panchayat. Therefore, if the budget is not passed on is not passed on account of having lost the majority of the group of the petitioner who is Sarpanch of the Gram Panchayat, it cannot be said that the Development Commissioner was wrong or the power exercised by the Development Commissioner is arbitrary or unreasonable in forming the opinion that the Panchayat has become incompetent to perform its duties and deserves to be dissolved."

It may also be recorded that in the facts of the said case, the Court found that out of 21 elected members, 5 members had resigned and 4 persons had ceased to be the members of the Gram Panchayat and therefore, the remaining members were only 12, who could participate at the meeting and amongst the group of 12 members, the petitioner had support of only 5 members as against 5 members opposing the group of the petitioner and therefore the Court found that the resolution passed by only 4 members styling itself of passing the budget cannot be said as valid and therefore, ultimately, the Court upheld the decision of the Development Commissioner and dissolved the Gram Panchayat.

21. In case of **Rakeshkumar Somabhai Rathod Vs. The State of Gujarat & Ors. reported at 2006(1) GLH**

551, this Court (Coram : M.R. Shah, J.) had again an occasion to consider the question for exercise of the power under Section 253 of the Act. It was observed by the Court inter alia at para 7 after considering the decision of this Court in case of Thasara Village Panchayat(supra) that it was incumbent upon the part of the Development Commissioner to consider the reasons for not passing the budget on or before 31st March and on the basis of which the State was required to form an opinion. It is true that in the said decision, this Court observed that by misreading the Judgment of the learned Single Judge of this Court, the Development Commissioner withdrew the Notice under Section 253 of the Act by holding that in view of the budget passed subsequently, the same is permissible which cannot be sustained and therefore, the Court quashed and set aside and remanded the matter to the Development Commissioner. It appears that in the said decision the attention of this Court is not brought to the binding decision of the Division Bench of this Court in the case of Nathalal Manilal Patel(supra) and more particularly the observation made at para 9 by the Division Bench of this Court which is also reproduced hereinabove, whereby the view taken is that, budget if passed subsequently before the Development Commissioner exercised the power of supersession which is now for dissolution, it cannot be said that the Panchayat has become incompetent to perform its duties and functions.

Not only that but it also appears that it was also not brought to the notice of this Court in case of Rakesh S. Rathod(supra) that earlier coordinate bench of this Court (Coram:J.M.Panchal,J.) in Special Civil Application No. 6492 of 1997 in case of Luvara Gram Panchayat(supra) after following the Division Bench decision of this Court in case of Nathalal Manilal Patel(supra) has held that budget if passed subsequently is substantial compliance. Therefore, the aforesaid observation of this Court in case of Rakesh S. Rathod(supra) can be said as *per in curium* in view of the zaforesaid decision of the Division Bench of this Court. Further, in the said decision, this Court had no occasion to consider the consequence of the dissolution leading to not only fresh election but additional burden upon the public revenue for the fresh election and thereby causing additional burden upon the voters/residents/citizens of the area.

22. Therefore, it appears that the following proposition can be deduced keeping in view the statutory provisions and the aforesaid case law.

1) If the Budget is not passed before 31st March by the Panchayat, it is lawful for the State Government to form an opinion that the Panchayat has become incompetent to perform its duties. However, such provisions are only enabling provision leaving discretion to the State Government to form an opinion and to pass the

order of dissolution or not.

2) The requirement of passing the budget before 31st March of every year is directory and not mandatory. Therefore, if the budget is not passed before 31st March, the initiation of the action by the State Government/Development Commissioner under Section 253 of the Act is not unwarranted.

3) After the action is initiated under Section 253 of the Act by the Authority, it will be for the concerned Panchayat to satisfy there there were circumstances beyond control, which resulted into non-passing of the budget prior to 31st March, so as to enable the Development Commissioner to exercise the discretion on the facts and circumstances of the case prior to 31st March. After the action is initiated, if the budget is passed before hearing takes place before the authority, for exercise of powers under Section 253 of the Act, it would be one of the strong circumstance, which may be required to be considered by the authority to satisfy itself that the Panchayat has not become incompetent to perform the duty imposed on it as the budget is passed.

4) In the event, the budget is not passed even before the hearing takes place for exercise of the power under Section 253 of the Act by the Authority, it may be required for the authority to examine the conduct of the elected body of

the Panchayat after the initiation of the action and at that stage, one of the important aspects, which may be required to be examined is also be that whether any attempt is made on the part of the Panchayat through its elected representative to pass the budget and thereby to show their competence to perform the duties imposed on the Panchayat under the Act.

Thereafter, if the authority finds that there is no majority amongst the elected representative of the Panchayat for passing of the budget, it would be justified in passing the order for dissolution of the Panchayat and at that stage, it may also examine the conduct on the part of the elected representative in performance of their duties for discharging the statutory obligation of the Panchayat for passing of the budget before 31st March. In a given case, if the authority finds on proper material that the conduct on the part of the elected representative is leading to a Panchayat making incompetent to perform the duty, thereby creating situation of burden to the voters/citizens for the fresh election, further, action in accordance with law may also be separately taken for misconduct/misuse of power while holding the office as the member/office bearer of a Panchayat.

23. Mr. Mengdey, learned AGP, during the course of the hearing, upon the query of the Court, under the instruction of the officer of the concerned

department of the Government has declared before the Court that if a fresh election is to be held for a Taluka Panchayat, through the State Election Commission, the expenses would be about Rs. 7 Lakhs.

24. If the object of the Gujarat Panchayat Act, 1961, as then was in existence, is seen, the same was with a view to re-organise the administration pertaining to local Government in furtherance of the object of the democratic decentralisation of powers in favour of different classes of the Panchayat. After 73rd amendment in the Constitution, such Panchayats are given constitutional status and therefore, the new Gujarat Panchayat Act, 1993, is brought into force. The principle object of the Act is to run the administration of the concerned Panchayat to look after the discharge of the statutory obligations which are essentially for creating and preservation of the benefit and interest of the citizens/voters who are residing in the said.

It deserves to be recorded that in every election, the voters cast vote in favour of a particular candidate by reposing faith in him/her to discharge lawful obligation keeping in view the larger interest and the said statutory body or local self Government as against the personal interest of such candidates. Therefore, it is the pious obligation of the elected representative to

ensure preservation of larger interest of the local self Government, which in the present case is Taluka Panchayat as against the personal interest of such elected representatives. If the budget is not passed, no expenses lawfully can be incurred for maintenance of the basic amenities to be provided to the residents/citizens of the local self Government, nor any development can be there for such purpose and the stalement may arise in the administration. If there is genuine bonafide reason for opposing the budget, it may stand on different footing and possibly such may be justified in a given case. But, conduct on the part of the elected representative/s of opposing the budget and thereby to strangulate the administration of a local self Government with extraneous consideration, or with malafide purpose, cannot be said as in discharge of pious obligation reposed upon such elected representative by his/her voters. Suffice it to say that in any tug of war for more power or for loosing the power, the collective interest of local self Government and thereby of the voters/citizens cannot be sacrificed and that too the extent that the burden of cost of election is to be suffered by the voters/citizens for no fault on their part. Such a conduct on the part of the elected representative can be said as unbecoming of the elected representative of a local self Government and also results into lowering down the image of an elected representative, who is

otherwise to discharge pious obligation while on duty. Therefore, it can be said as disgraceful conduct and also abuse of power. In a given case, if ultimately, a situation has been created on account of such conduct to saddle with the public fund for the expenses of fresh election, then such conduct may result into initiation of the proceedings for removal from office and may be in a given case, the contingency may arise for fastening with the financial responsibility appropriately.

25. Therefore, inspite of the sincere efforts on the part of the elected representative, the budget is not passed and it has resulted into a situation of dissolution of the Panchayat, it may stand on different footing. But, if due to extraneous consideration or due to the extraneous reasons the concerned elected representative of a Panchayat or office bearer has not made sincere effort to see that the budget is passed, and the situation is created of a total stalement in the administration of a Panchayat and consequently burdening the voters/residents of the area with the additional cost of election, at least, it would be a case to examine the conduct of the concerned elected representative and to pass appropriate orders as may be permissible in law. Therefore, keeping in view the larger public interest, that on account of exercise of the power by the elected representatives with extraneous consideration or extraneous reasons, the

voters/residents/citizens or public revenue may not be unnecessarily saddled with heavy cost of election, I am inclined to make observations as referred in the last sub paragraph.

26. If the facts of the present cases are examined in light of the aforesaid legal position, it appears that so far as Lathi Taluka Panchayat is concerned, the budget was already passed on 29.04.2006, in any case, prior to the impugned order dated 12.05.2006 passed by the Development Commissioner and therefore, keeping in view the aforesaid aspects, even if the Development Commissioner had enabling power to form an opinion on the date when the Development Commissioner exercised the power under Section 253 of the Act as the budget was already passed, it could not be concluded that the Taluka Panchayat was incompetent to perform its duties on 12.05.2006. Therefore, the order passed by the Development Commissioner for dissolving Lathi Taluka Panchayat deserves to be quashed and set aside. Consequently, the elected body would stand restored to their office in the Taluka Panchayat.

27. In the second group of petition pertaining to Kukavav Taluka Panchayat, it appears that after the show-cause notice, the matter was not at all placed before the elected body of Taluka Panchayat. Further, the original file of the Development Commissioner shows that on 18.05.2006, the application for supplying copy

of the show-cause notice was made, which was granted by the Development Commissioner. Even in the proceedings of the Development Commissioner dated 18.05.2006, it has been recorded that no meeting of Taluka Panchayat is held for submitting reply to the show-cause notice. The 11 members of the Taluka Panchayat had prayed to submit their reply after the copy of the show-cause notice was supplied to them. When the notice was received on 18.05.2006, it was required for the Development Commissioner to grant some reasonable time to submit their reply or in any case, when the meeting of the Taluka Panchayat was not held for submitting the reply, the Development Commissioner could have waited for reply by the other elected representatives of the Taluka Panchayat who were to be affected by the order of dissolution. It appears that the President, Vice President and other two persons who were possibly not having the majority declared before the Development Commissioner their desire for dissolution of Kukavav Taluka Panchayat possibly because the motion of no confidence was passed against the President and Vice President, which resulted into loosing the power and other two members event if considered totally to 4 members, who were having no majority from amongst elected representative of the said Taluka Panchayat. In such circumstances, the Development Commissioner could have directed for holding of the meeting of the Kukavav Taluka Panchayat for submitting reply to the show-cause notice through the

Taluka Development Officer or the District Development Officer. As no such exercise is undertaken and immediately on the next date, the order is passed, I find that the order can be said as in breach of the principles of natural justice and the matter deserves to be reconsidered by the Development Commissioner in light of observations made by this court hereinabove in this Judgment.

28. However, as there is a strong factum of non-passing of the budget, may be on account of non-holding of the meeting by the outgoing President of the Taluka Panchayat or may be on account of inaction on the part of the Taluka Development Officer, until the Development Commissioner reconsiders the matter and passes the fresh order, I find that it would not be a case for allowing the elected body to function and the administrator who is at present holding the charge can be allowed to continue to look after the affairs of the administration of the Taluka Panchayat. However, such interim arrangement cannot preclude the Development Commissioner for directing the Taluka Development Officer to convene the meeting for submitting reply to the show-cause notice or in case such a course is not adopted, the concerned member who are petitioners herein, may submit their reply to the show-cause notice as may be permissible in law after undertaking the recourse in accordance with law.

29.In view of the above, the order passed by the Development Commissioner for dissolution of Lathi Taluka Panchayat dated 12.05.2006 is quashed and set aside and consequently, the elected body of Lathi Taluka Panchayat shall stand restored.

Special Civil Application No. 11150 of 2006 with Special Civil Application Nos. 11151 of 2006 to 11156 of 2006 with Special Civil Application No. 10982 of 2006 are allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

30.The order passed by the Development Commissioner for dissolution of Kukavav Taluka Panchayat dated 19.05.2006 is quashed only on the ground of principles of natural justice with further direction to the Development Commissioner to reconsider the matter in light of the observations made by this Court hereinabove in this Judgment. It is also directed that until the Development Commissioner reconsiders the matter after giving opportunity of hearing to all concerned, the administrator shall continue to look after the administration of Taluka Panchayat and shall act as per the final order which may be passed by the Development Commissioner after giving opportunity of hearing to all concerned. It is clarified that the direction of this Court to continue the administrator to look after the administration

of the Kukavav Taluka Panchayat shall not preclude the Development Commissioner to direct for holding of the meeting of elected representative of Kukavav Taluka Panchayat for submitting reply or other incidental aspects in response to the show-cause notice for dissolution of Taluka Panchayat under Section 253 of the Act.

Special Civil Application No. 11136 of 2006 shall stand partly allowed to the aforesaid extent only. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

31. Mr. Mangukiya, learned counsel appearing for the petitioners has not pressed the amendment moved by filing Civil Application (Stamp) No. 9950 of 2006 in Special Civil Application No. 11136 of 2006 and therefore, the Civil Application shall stand disposed of as not pressed.

(JAYANT PATEL, J.)

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